

204656

BEFORE THE
SURFACE TRANSPORTATION BOARD



ARIZONA ELECTRIC POWER
COOPERATIVE, INC.,

Complainant,

v.

THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY
COMPANY and

UNION PACIFIC RAILROAD
COMPANY,

Defendants.

Docket No. 42058

ENTERED
Office of the Secretary

JAN 31 2002

Part of
Public Record

UNION PACIFIC'S MOTION FOR EXTENSION OF TIME

UP seeks a ten-day extension of time to serve its objections and responses to AEPCO's Third Supplemental Interrogatories and Requests for Production. UP requested an extension from AEPCO's counsel, but they refused. UP has no alternative but to seek Board protection due to AEPCO's failure to accede to UP's reasonable request for additional time to respond. See 49 C.F.R. § 1114.21(c).

AEPCO's Third Supplemental Interrogatories and Requests for Production purport to implement the Board's December 31, 2001 Order requiring AEPCO to modify its 102 Amended Interrogatories and Requests for Production, served originally on March 9, 2001. AEPCO served its third supplemental amended discovery on January 7, 2002, demanding that UP respond to the 102 discovery requests (as revised) by January 31, 2002. AEPCO's requests require UP to provide detailed information and documents on a wide range of issues from all

levels of the railroad. UP is working diligently to respond, but for requests of such scope and complexity, the 24-day response time imposed unilaterally by AEPCO is simply unreasonable. See 49 C.F.R. § 1114.30(b) (requests for production of documents “should specify a reasonable time . . . of making the inspection and performing the related acts”).

UP does not seek to delay these proceedings; it seeks only a ten-day extension. It will serve its objections and responses on or before February 11, 2002.¹ Moreover, as it prepares its response, UP is identifying and beginning to collect the substantial volume of additional information that it will agree to produce. It will begin to produce that additional information on a rolling basis beginning on or shortly after February 11, 2002.

UP has already responded to portions of AEPCO’s discovery that were not implicated by the Board’s December 31 Order. UP employees and agents have already spent hundreds of hours identifying and retrieving responsive materials, and UP has already produced over 33.5 megabytes of data and 6,000 pages of documents.

Further, UP is working diligently to respond to AEPCO’s revised amended discovery requests. UP’s request for additional time results not from procrastination on UP’s part, but rather from the sweeping nature of AEPCO’s 102 requests and the resulting burden imposed on UP personnel who must be consulted in order to prepare complete and accurate responses. AEPCO’s revised requests require UP to provide certain information that UP may or may not create or maintain in the ordinary course of business, and UP personnel must determine whether the requested information exists and whether existing information is responsive. The

¹ UP will respond on or before February 11, 2002, even if the Board has not addressed this motion by then.

burden on UP personnel is particularly acute because UP is simultaneously involved in other discovery-intensive proceedings, including a rate case involving Northern States Power and a litigation involving Western Resources. AEPCO's counsel are aware of these matters and the burdens they are imposing on UP -- the two proceedings were also initiated by their clients -- yet still they refused to consent to any extension.

AEPCO suffers no prejudice from UP's proposed ten-day extension. Their refusal to consent to this modest relief ignores the Board's call for "potential litigants to negotiate, in good faith, voluntary discovery . . . thus minimizing the need for [Board] intervention." Coal Rate Guidelines, Nationwide, 1 I.C.C.2d 520, 548 (1985).

UP had hoped that professional courtesy would prevail and that AEPCO would accede to UP's extension request. Unfortunately, UP must seek relief from the Board.

Respectfully submitted,



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January 30, 2002

CERTIFICATE OF SERVICE


I, Eric Bosset, hereby certify that on this 30th day of January 2001, I caused
copies of Union Pacific's Motion For Extension of Time to be served on the following
individuals:

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